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Attorney for Defendants

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DZ BANK AG DEUTSCHE ZENTRAL-
GENOSSENSCHAFTSBANK,
FRANKFURT AM MAIN, NEW YORK
BRANCH,

Plaintiff,

v.

THE MEYER IRREVOCABLE TRUST,
INSURANCE CHOICES 4 U, INC., and
INSURANCE CHOICES FOR YOU,
INC.,

Defendants.

No. 2:14-cv-01133-RSJ

DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OF
DISMISSAL

NOTE ON MOTION CALENDAR:
MARCH 27, 2015

Defendants, The Meyer Irrevocable Trust, Insurance Choices 4 U, Inc., and Insurance Choices for You, Inc. ("Defendants"), by and through counsel, move the court for an order dismissing this case with prejudice.

FACTS

The Complaint herein (Dkt. #1 at p. 12, lines 21-23), seeks judgment in the amount of \$123,200.

Said amount was tendered in full, including interest through January 30, 2015 at the rate of 34¢ per day.

The full amount sought in the Complaint has been paid in full.

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1 ISSUE PRESENTED

2 When Plaintiff has received the full amount pled in the Complaint herein, an Answer has
3 been filed, and the matter is proceeding, is dismissal of the Complaint proper if the full amount
4 sought in the Complaint is tendered and accepted by the Plaintiff?

5 LEGAL ARGUMENT

6 *Randall v. Gerrick*, 93 Wash. 522, 161 P. 357 (Wash. 1916), the court stated:

8 It is the settled rule in this state that the acceptance of money in
9 satisfaction of a claim against one joint tort-feasor, even with a
10 reservation that it is not to be considered as a release of another
11 joint tort-feasor, operates to release the latter. *Abb v. Northern
Pacific Ry. Co.*, 28 Wash. 428, 68 Pac. 954, 58 L. R. A. 293, 92
Am. St. Rep. 864.

12 The effect of *Randall* has been mitigated in Washington by the adoption of the Uniform
13 Comparative Fault Act, RCW 4.22.010 *et. seq.* However, intentional acts are not included in the
14 statutory definition of “fault” in the contributory and comparative fault statutes, and, thus, a
15 negligent tortfeasor is not entitled to apportion liability to an intentional tortfeasor. *Tegman v.
Accident & Medical Investigations, Inc.*, 107 Wash.App. 868, 30 P.3d 8 (2001), *review granted
in part*, 145 Wash.2d 1034, 43 P.3d 21, *remanded*, 150 Wash.2d 102, 75 P.3d 497.

18 CONCLUSION

19 In this case the Complaint requests relief of \$123,200, a specific sum, from the
20 Defendants for receipt of a fraudulent conveyance. It does not request any other amount. The
21 entire sum has been paid. This constitutes a release, and the Defendants are entitled to a
22 judgment of dismissal as a matter of law.

23 DATED this March 4, 2015.

24
25 s/ Marc S. Stern
26 Marc S. Stern, WSBA #8194
27 Attorney for Defendants
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CERTIFICATE OF SERVICE

The undersigned states that on March 4, 2015, the document to which this certificate is attached was electronically filed with the above-entitled Court using the CM/ECF system and all parties were notified via ECF notification.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this March 4, 2015.

s/ Tanya Bainter
Tanya Bainter